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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO/ OAKLAND DIVISION**

GRADY JACKSON and KELLEY  
 ALEXANDER in their representative capacity  
 pursuant to Cal. Bus. & Prof. Code §§17203,  
 17535 and Cal. Code Civ Pro. §§ 382, 1021.5,

Plaintiffs

v.

BALANCED HEATH PRODUCTS, INC., a  
 Delaware Corporation; NIKKI HASKELL, an  
 individual; GENERAL NUTRITION  
 CORPORATION, a Pennsylvania Corporation,  
 GENERAL NUTRITION CENTERS, INC., a  
 Pennsylvania Corporation; and, VITAMIN  
 SHOPPE INDUSTRIES, Inc., a New York  
 Corporation, inclusive,

Defendants.

**CASE NO. C 08-05584-CW**

**REPRESENTATIVE ACTION AND  
 CLASS ACTION**

**FIRST AMENDED COMPLAINT FOR  
 DAMAGES AND EQUITABLE  
 RELIEF**

**BEFORE THE HONORABLE JUDGE  
 CLAUDIA WILKEN**

**JURY TRIAL DEMANDED**

Plaintiffs, Grady Jackson and Kelly Alexander, both individually and on behalf of others  
 similarly situated, bring this action against Defendants and each of them as follows:

**I. SUMMARY OF COMPLAINT**

1. This class action seeks to stop the sale and provide injunctive relief, restitution and  
 monetary damages from the manufacture and distribution of “Nikki Haskell’s StarCaps” dietary  
 supplement on behalf Plaintiffs and the Class members. StarCaps, alleged to be an “all natural

1 dietary supplement” actually contains Bumetanide, a drug only available in the United States by  
 2 prescription (hereinafter the term “StarCaps” shall refer only to the product lots containing  
 3 Bumetanide). Defendant Nikki Haskell (“Haskell”), through her company Defendant Balanced  
 4 Health Products, Inc. (“BHP”) created, manufactured, produced, advertised and distributed  
 5 through co-Defendants, General Nutrition Corporation (“GNC1”); General Nutrition Centers, Inc.  
 6 (“GNC2”) and Vitamin Shoppe Industries, Inc. (“Vitamin Shoppe”) “Nikki Haskell’s StarCaps”  
 7 (hereinafter referred to as “The Product” or “StarCaps”). Upon information and belief,  
 8 Defendants GNC1, GNC2 and Vitamin Shoppe were the primary retail distributors of StarCaps.  
 9 Sold as a “Diet System” and “Dietary Supplement” that is an “all natural dietary supplement”  
 10 which “is a rare blend of papaya and garlic containing a unique combination of natural plant  
 11 ingredients...” which, according to literature attached to the bottles states that ‘millions of people  
 12 have found... to be the solution to their weight loss problems’. StarCaps boasts that the “all  
 13 natural dietary supplement detoxes your system by metabolizing protein and eliminating bloat.  
 14 It’s safe, fast and effective.... Lose between 10 and 125 pounds and keep it off!” StarCaps claims  
 15 its effects come from papaya and garlic act which they claim act as natural diuretics which causes  
 16 the user to lose weight. However, StarCaps actually contains Bumetanide, a powerful loop  
 17 diuretic available only by prescription. StarCaps has been widely marketed, distributed and sold  
 18 throughout the United States in various retail stores, including the retail and online retail versions  
 19 of Defendants GNC1 & 2 and Vitamin Shoppe. StarCaps has been available for more than  
 20 twenty years. StarCaps label, packaging and other various advertising fails to identify and fails to  
 21 warn that it contains near therapeutic levels of Bumetanide. Upon information and belief, co-  
 22 defendants GNC, and Vitamin Shoppe have participated in joint advertising of StarCaps to  
 23 consumers throughout the United States. Purchasers of StarCaps spent approximately \$100.00  
 24 per bottle.

25         2. Defendants’ efforts to promote and sell the product have worked phenomenally  
 26 well. StarCaps has been on the market for approximately twenty years as one of the top selling  
 27 dietary supplements and claims millions of bottles sold. StarCaps has garnered celebrity  
 28 endorsements and promoted the product to where it has gained legendary status as a diet pill.

1 Haskell even received an award for StarCaps billboards along the famous Sunset Strip in Los  
 2 Angeles promoting StarCaps. The billboards have been a staple of the Sunset Strip since 1991  
 3 which picture Haskell atop “StarCaps” using fonts made to resemble the famous Hollywood sign.

4 3. The purpose of this action is to put a stop to the sale of StarCaps and the false  
 5 statements and mislabeling that persuaded customers to pay approximately one hundred dollars  
 6 per bottle for StarCaps; to provide warnings to people who still have StarCaps or could come into  
 7 contact with StarCaps, regarding the serious health problems that could occur from the use of  
 8 StarCaps such as profound water loss, electrolyte depletion, dehydration, reduction in blood  
 9 volume, circulatory collapse, vascular thrombosis, embolism and hypokalemia that can occur  
 10 when StarCaps is taken as directed; to recall any product that is in the marketplace and to provide  
 11 restitution to the Plaintiff and the class; and, the disgorgement of any revenues received from the  
 12 sale of the Product. Although, BHP has made the statement that they are no longer shipping  
 13 StarCaps, upon information and belief the GNC1, GNC2, and Vitamin Shoppe among other  
 14 retailers throughout the nation continue to sell StarCaps and upon information and belief, unused  
 15 StarCaps remains in the marketplace.

16 4. This action is a consumer class and representative action brought under  
 17 California’s Unfair Competition Law and False Advertising Law (respectively, Cal. Bus. & Prof.  
 18 Code §§17200 *et seq.* and §§17500 *et. seq.*, sometimes hereinafter collectively referred to as the  
 19 “UCL”), and under Cal. Code of Civil Procedure §382. The Complaint also alleges violation of  
 20 California’s Sherman Food, Drug and Cosmetic Act (California Health and Safety Code §§  
 21 108975-111915 (“Sherman Act”),) negligence, breach of the warranty of fitness for intended use  
 22 and strict liability. Every bottle of The Product is “misbranded” under the Sherman Act. The  
 23 action is brought on behalf of those persons throughout the United States who purchased  
 24 StarCaps manufactured, marketed, promoted, advertised, distributed and/or sold by collectively  
 25 collectively Defendants.

26 5. Plaintiff Jackson is a professional football player who purchased StarCaps because  
 27 it claimed to be an all natural dietary supplement to be able to lose weight in preparation for the  
 28 upcoming football season. In March of 2008 Mr. Jackson bought his first bottle of The Product at

1 the General Nutrition Center store in Alameda, California. He purchased a second bottle in  
 2 approximately June of 2008 at a Vitamin Shoppe in Atlanta, Georgia. Later in the summer,  
 3 Jackson tested positive in a banned substance test for the National Football League and was  
 4 suspended for four games. The substance detected was Bumenatide. Jackson is appealing the  
 5 ruling with the National Football League.

6 6. Plaintiff Alexander is a California resident who purchased StarCaps for over four  
 7 years because it claimed to be an all natural dietary supplement. Alexander purchased numerous  
 8 bottles of StarCaps at both General Nutrition Center stores and Vitamin Shoppe stores.

## 10 II. PARTIES

11 7. Plaintiff Grady Jackson is an individual over the age of 18 and is a resident of  
 12 Georgia. Jackson brings this action solely in his representative capacity, pursuant to Cal. Bus. &  
 13 Prof. Code §§17203 and 17535 and Cal. Code Civ. Pro. §1021.5, on behalf of all purchasers in  
 14 the United States of StarCaps.

15 8. Plaintiff Kelley Alexander is an individual over the age of 18 and is a resident of  
 16 Los Angeles County California. Alexander brings this action solely in her representative capacity  
 17 pursuant to Cal. Bus. & Professions Code §§17203 and 17535 and Cal. Code of Civ. Pro.  
 18 §1021.5, on behalf of all purchasers in the United States of StarCaps.

19 8. Plaintiffs are informed and believe and thereon allege that Defendant Balanced  
 20 Health Products (“BHP”), is a Delaware corporation doing business in California with its  
 21 principal place of business in New York, New York. BHP is the producer, manufactured and  
 22 both wholesale and retail (through its internet site [www.starcaps.com](http://www.starcaps.com)) distributor of “Nikki  
 23 Haskell’s StarCaps.” BHP was formerly registered to do business in California and although it  
 24 does business in California it is not properly registered to do so.

25 9. Plaintiffs are informed and believe and thereon allege that Defendant Haskell is a  
 26 resident of New York. Upon information and belief, Haskell is the sole owner of BHP and  
 27 operates BHP solely to her own benefit and is the alter ego of BHP.

28 10. Plaintiffs are informed and believe and thereon allege that Defendant GNC1 and

1 GNC2 are the owners, operators and franchisors of the General Nutrition Stores, which include  
 2 stores in this judicial district. Upon information and belief, GNC1 & GNC2 are Pennsylvania  
 3 Corporations. GNC1 is registered to do business in California. GNC1 and GNC2 have a  
 4 principal place of business at 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

5 11. Plaintiffs are informed and believe and thereon allege that Defendant The Vitamin  
 6 Shoppe Industries, Inc. is a New York corporation with its principal place of business at 2101 91<sup>st</sup>  
 7 Street, North Bergen, New Jersey 07047. The Vitamin Shoppe Industries, Inc. does business as  
 8 The Vitamin Shoppe and has retail stores throughout California, the United States and on the  
 9 internet. The Vitamin Shoppe Industries, Inc. is registered to do business in the State of  
 10 California as a foreign corporation. Hereinafter, defendants GNC and Vitamin Shoppe are  
 11 collectively referred to as the "Retail Defendants".

12 12. Plaintiffs are informed and believe and thereon allege that at all times herein  
 13 mentioned, each of the Defendants, was the predecessor, successor in interest, agent or employee  
 14 of the other Defendants and was, in doing the things complained of herein, acting within the  
 15 scope of his, her or its agency and/or employment, and with the permission and consent of each of  
 16 the co-Defendants, and the actions herein alleged were ratified by each principal, employer and  
 17 master.

18 13. Plaintiffs are informed and believe and thereon allege that at all times mentioned  
 19 herein, the Defendants, and each of them, engaged in certain activities incident to the chain of  
 20 distribution of StarCaps to the general public. Such activities also include, without limitation,  
 21 packaging, developing and distributing products and related product information and print, point  
 22 of purchase, radio, television, internet advertising and marketing campaigns for StarCaps (all of  
 23 which are sometimes hereinafter collectively referred to as the "Advertising Activities").

#### 24 IV. JURISDICTION

25  
 26 14. This Court has original jurisdiction over this action pursuant to 28 U.S.C.  
 27 §§1332(d) and 1441 as the amount in controversy exceeds \$5,000,000.00 and the representative  
 28

1 Plaintiffs are citizens of a state different than any Defendant. On December 15, 2008 Defendant  
 2 General Nutrition Corporation and General Nutrition Centers, Inc. filed for removal of the action  
 3 under the 28 U.S.C. §1332(d) of the Class Action Fairness Act (“CAFA”) to this Court as there is  
 4 diversity under CAFA, 28 U.S.C. §1332(d) and approximately \$8,400,000.00 in controversy.  
 5 *(Defendant’s General Nutrition Corporation and General Nutrition Centers, Inc.’s Notice of*  
 6 *Removal to the United States District Court of California Pursuant to 28 USC §§ 1332(d) and*  
 7 *1441, Page2, ¶¶2 &3.)*

### 9 III. VENUE

10 15. Venue is proper in this District pursuant to 28 U.S.C. §1391 because a substantial  
 11 portion of the activities at issue occurred in this judicial district and all Defendants do substantial  
 12 business in this district and Defendants have received substantial fees from California consumers  
 13 who have purchased the Product here.

### 15 IV. CLASS ALLEGATIONS

16 16. This action is brought by Plaintiff pursuant to Federal Rule of Civil Procedure 23  
 17 on behalf of the following proposed class (“Proposed Class”):

18 All natural persons in the United States who, within the last four years,  
 19 purchased StarCaps from any of the Retail Defendants which contained  
 20 Bumenatide.

22 17. Plaintiffs and the Proposed Class seek certification of claims against Defendants  
 23 for injunctive relief pursuant to the Section 17204 of the UCL.

24 18. The following persons shall be excluded from the Class: (1) Defendants and its  
 25 subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the  
 26 proposed Class; (3) governmental entities; and (4) the judge(s) to whom this case is assigned and  
 27 any immediate family members thereof.  
 28

1           19.     Plaintiffs reserve the right to modify or amend the Class definition before the  
2 Court determines whether certification is appropriate.

3           20.     Certification of Plaintiffs' claims for class-wide treatment is appropriate under  
4 California law because Plaintiffs can prove the elements of their claims on a class-wide basis  
5 using the same evidence as would be used to prove those elements in individual actions alleging  
6 the same claims.

7           21.     **Numerosity Under Rule 23(a)(1):** Plaintiffs are informed and believe and thereon  
8 allege that each Proposed Class is made up of thousands of individuals, sufficiently numerous that  
9 their individual joinder is impractical. The precise identities, numbers and addresses of members  
10 of each Proposed Class is unknown to the Plaintiff at this time, but may and should be known  
11 with proper and full discovery of Defendants, third parties, and their respective records.

12           22.     **Commonality Under Rule 23(a)(2):** There is a well-defined commonality and  
13 community of interest in the questions of fact and law involved affecting the members of each  
14 Proposed Class. The common questions of law and fact as to each Proposed Class include, but are  
15 not limited to:

16                   a)     whether Defendants violated Business and Professions Code section  
17 17200, *et seq.* and section 17500, *et seq.* by virtue of their production, distribution, marketing,  
18 advertising and sale of StarCaps which was falsely labeled and contained Bumetanide;

19                   b)     whether Bumetanide was present in StarCaps and if so when Bumetanide  
20 first became present in StarCaps;

21                   c)     whether Defendants knew or should have known that Bumetanide was  
22 present in StarCaps;

23                   d)     whether Defendants were negligent in the placement of Bumetanide in  
24 StarCaps;

25                   e)     whether the Retail Defendants were negligent in selling Bumetanide to the  
26 Class;

27                   f)     whether Defendants BHP and Haskell violated the California Sherman Act  
28 by the presence of Bumetanide in StarCaps;

g) whether the Retail Defendants violated the California Sherman Act by selling Starcaps with Bumentanide;

h) whether all Defendants should be held strictly liable for damages caused by the sale of StarCaps with Bumetanide;

i) whether Defendants should be enjoined from any further sale of StarCaps to the general public;

j) whether the Defendants were unjustly enriched by the sale of StarCaps with Bumetanide; and,

k) whether Plaintiffs and the class are entitled to restitution of the funds expended to purchase StarCaps with Bumetanide;

l) whether Plaintiffs and the class are entitled to a disgorgement of revenues by Defendants for their manufacture and sale of StarCaps with Bumetanide

23. **Typicality Under Rule 23(a)(3):** Plaintiff's claims are typical of the claims of the members of each Proposed Class because 1) Plaintiffs satisfy each of the criteria of each Proposed Class; 2) all other members of each Proposed Class have suffered or will suffer the identical harm as each Proposed Class' plaintiff representative as a result of Defendants' violations of law as alleged herein; 3) the remedies sought by Plaintiffs is also sought by each of the other members of each Proposed Class and is directed towards Defendants' conduct perpetrated on each Proposed Class as a whole.

24. **Adequacy of Representation under Rule 23(a)(4):** Plaintiff is an adequate representative of each Proposed Class because his interests do not conflict with the interests of the members of each Proposed Class they seek to represent. Plaintiff has retained competent counsel for this class action and Plaintiff and his counsel intend to prosecute this action vigorously. Plaintiff and his counsel will fairly and adequately protect the interests of the members of each Proposed Class.

25. **The Class Can Be Properly Maintained Under Rules 23(b)(3) and (c):** This suit may be maintained as a class action under Federal Rule 23 because questions of fact and law



common to each Proposed Class predominate over the questions affecting only individual members of the classes and a class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each individual class member may be disproportionate to the burden and expense of individual prosecution of complex and extensive litigation to proscribe Defendants' conduct and practices. Additionally, effective redress for each and every class member against Defendants may be limited or even impossible where serial, duplicitous, or concurrent litigation occurs on these disputes. Even if individual class members could afford or justify the prosecution of their separate claims, the court system may not be up to the task. Individualized litigation may lead to incongruous and conflicting judgments against Defendants. To the contrary, a class action procedure involving all class members, Defendants and the court present fewer management difficulties, and provide the benefit of a single adjudication, economy of scale, and judicial efficiency and fairness.

## V. GENERAL ALLEGATIONS

26. Approximately twenty-five years ago, Nikki Haskell developed StarCaps Dietary Supplement. StarCaps was touted as an "all natural" over the counter diet pill that contained garlic and papaya extract as its main active ingredients. In reality, StarCaps contains Bumetanide, a powerful loop diuretic that is available by prescription only and is considered a banned substance in the National Football League. Bumetanide is used for the treatment of edema associated with congestive heart failure, hepatic and renal disease. The November/ December 2007 issue of The Journal of Analytical Toxicology published the article *Detection of Bumetanide in an Over-the-Counter Supplement*, in which a study at the Center for Human Toxicology at the University of Utah purchased bottles of StarCaps and tested the pills through a high performance liquid chromatography and revealed that all specimens contained equal amounts of Bumetanide at near therapeutic doses. The article further suggests that the uniformity of the doses suggests the placement of Bumetanide was intentional.

27. Plaintiffs are informed and believe and thereon allege that Defendants and each of them were aware or should have been aware that StarCaps contained Bumetanide.

28. Plaintiffs are informed and believe and thereon allege that despite Defendants' extensive knowledge of the problem, Defendants, and each of them, continued to engage in the manufacture, advertisement, distribution and/or retail sales of StarCaps to the general public after having such knowledge. Defendants knowingly and intentionally withheld this information from the general public in order to sell StarCaps under the guise that it is an "all natural dietary supplement".

29. Plaintiffs is informed and believe and thereon allege that Defendants, and each of them, made a conscious, economically driven decision to use Bumetanide in StarCaps and conceal from the public both the inclusion of Bumetanide and its dangerous side effects.

30. Despite Defendants' knowledge of the contamination it was not until numerous National Football League players, Plaintiff Grady Jackson being one of them, tested positive for a banned substance and another player filed suit for his suspension that StarCaps discontinued the shipping of The Product. As of October 30, 2008 the StarCaps.com, the office site of the Defendant Balanced Health Products, Inc. issued the following statement:

**PRESS RELEASE**

**We've received notice of a problem with an NFL player.**

**We have referred the matter to our counsel and are taking all necessary steps to ensure that our customers receive product that is safe and effective. We have temporarily suspended shipping of StarCaps pending the results of our investigation.**

**Thank You.**

31. Plaintiffs are informed and believe and thereon allege that despite the "Press Release" that StarCaps was still available for purchase through General Nutrition Centers and The Vitamin Shoppe retail stores and their internet sites until such time that BHP issued a voluntary recall of the Product through the Food and Drug Administration. The retail defendant's continued to sell StarCaps even after the notice on Starcaps.com.

32. Plaintiff Grady Jackson is a professional football player with the Atlanta Falcons Football Club. In March of 2008, Jackson purchased his first bottle of StarCaps at a General Nutrition Center store in Alameda, California. In June of 2008 he purchased his second bottle at

1 a Vitamin Shoppe in Atlanta, Georgia. Mr. Jackson purchased StarCaps because the bottles  
 2 contained information that StarCaps is an “all natural dietary supplement” containing active  
 3 ingredients of papaya extract and garlic, which the bottles claim are natural diuretics. Thereafter,  
 4 during random drug testing, Jackson was suspended for testing positive for Bumetamide, a  
 5 banned substance under the National Football League substance program. Jackson’s suspension  
 6 of four games is currently being appealed with the National Football League.

7 33. Plaintiff Kelley Alexander California. She has been purchasing StarCaps on a  
 8 regular basis from General Nutrition Centers and The Vitamin Shoppe for over ten years.  
 9 Alexander purchased the Product because she believed that it contained only natural ingredients  
 10 and safe and trusted the Product because it was sold at General Nutrition Centers and the Vitamin  
 11 Shoppe.

12 34. StarCaps is sold in individual bottles that come with a pamphlet entitled “Nikki  
 13 Haskell’s StarCaps Booklet”. The pamphlet is attached to the bottle by a gold elastic ribbon. The  
 14 booklet and the bottle are wrapped together in plastic. The booklet contains numerous  
 15 representations including the following:

16 **This all-natural dietary supplement detoxes your system by metabolizing**  
 17 **protein and eliminating bloat. It’s safe, fast and effective, and it contains no**  
 18 **ephedra. Lose between 10 and 125 pounds and keep it off!**  
 19 **StarCaps are available at GNC, Great Earth and The Vitamin Shoppe.**

## 20 21 THE RETAIL DEFENDANTS

22 35. General Nutrition Centers, according to the Investor Relations page of its website  
 23 at [www.gnc.com](http://www.gnc.com), is the largest global specialty retailer of nutritional products; including vitamin,  
 24 mineral, herbal and other specialty supplements, and sports nutrition, diet and energy products.  
 25 They own and operate over 4800 retail locations in the United States and additional outlets in  
 26 forty-eight foreign countries. GNC represents to consumers and to its own investors that they are  
 27 not only knowledgeable but protect consumers from dangerous products. In its 10K report from  
 28 2007, GNC states the following: “The company states that it maintains distribution centers in

1 Pennsylvania, South Carolina and Arizona. Each has a quality control department that monitors  
 2 products received from our vendors to ensure quality standards.” GNC also recognizes the  
 3 massive size of the unregulated dietary supplement industry, stating that it made up \$152,000,000  
 4 of GNC’s sales (2007) and they specifically address this part of the market in their financial  
 5 reporting. GNC’s 2007 10K further states: “Diet products consist of various formulas designed  
 6 to supplement the diet and exercise plans of weight conscious consumers. Our target consumer  
 7 for diet products is the 18-49 year old female. We typically offer a variety of diet products,  
 8 including pills, meal replacements, shakes, diet bars, and teas. Our retail stores offer our  
 9 proprietary and *third-party products suitable for different diet and weight management*  
 10 *approaches*, including low-carbohydrate and products designed to increase thermogenesis (a  
 11 change in the body’s metabolic rate measured in terms of calories) and metabolism.” (*Emphasis*  
 12 *added*, GNC 2007 10K.)

13 36. The Vitamin Shoppe owns and operates more than four hundred retail locations in  
 14 thirty-seven states as well as maintains a robust internet site with scores of articles and health  
 15 information it provides to its customers. They tout themselves as a place, both in store and on the  
 16 internet, as a place where consumers can be educated about health and the products they offer.  
 17 “Over the years, The Vitamin Shoppe has grown not only in size and product selection, but also  
 18 in the ability to inform and educate customers. The Vitamin Shoppe is recognized as an innovator  
 19 in providing product information, associate training, and customer education.”

20 [http://www.vitaminshoppe.com/content/en/support/help/about\\_us.jsp?intsource=footer](http://www.vitaminshoppe.com/content/en/support/help/about_us.jsp?intsource=footer).

21 37. The Vitamin Shoppe also touts quality control from its third party vendors and  
 22 represents the following regarding their products from third party vendors in the 10K reporting of  
 23 VS Holdings, Inc (The Vitamin Shoppe’s parent company): “[W]e have established *quality*  
 24 *control operating procedures to review vendors of third-party products for their track records on*  
 25 *issues such as quality, efficacy and safety, to ensure that all third-party vendors meet the*  
 26 *manufacturing and advertising standards required by the regulatory agencies* to satisfy our  
 27 standards. We further review each new product proposed to be carried by us to assure the safety  
 28 of the ingredients. We reject those products that do not comply with the law or contain

1 ingredients that we believe may be unsafe.” (*Emphasis added*, VS Holdings, Inc. 2007 10K).

2 38. The Retail Defendants are relied upon every day by their customers to provide to  
3 them safe, effective and properly labeled products. They hold themselves out at companies with  
4 superior knowledge, the ability and wherewithal to apply and enforce quality control and  
5 standards, including vetting third party vendors on behalf of consumers. Their representations to  
6 consumers state that they should be trusted and their concerns are alleviated if they purchase  
7 products from them.

### 8 **FIRST CAUSE OF ACTION**

#### 9 **Violation Of Business And Professions Code Section 17200, *et seq.*** 10 **(Against All Defendants)**

11 39. Plaintiffs re-allege and incorporate by reference, each and every allegation set  
12 forth in the paragraphs 1 through 38 above, as though they are set forth in full.

13 40. Plaintiffs are informed and believe and thereon allege that by engaging in the false  
14 advertisement, as more fully described in the Second Cause of Action, and concealing the  
15 presence of Bumetamide in StarCaps, Defendants, and each of them, have engaged in unlawful,  
16 unfair and/or fraudulent business acts and practices and engaged in unfair, deceptive, untrue  
17 and/or misleading advertising, in violation of the UCL. Further, Defendants, and each of them,  
18 directly and indirectly violated the California Sherman Act by manufacturing and/or distributing  
19 the Product that is mislabeled, which gives rise to a violation of the UCL.

20 41. Plaintiffs are informed and believe and thereon allege that Defendants GNC1,  
21 GNC2, Vitamin Shoppe (The Retail Defendants) aided and abetted Haskell and BHP in violating  
22 the UCL by cooperating in advertisements with Defendant BHP and Haskell and selling The  
23 Product to the general public. By placing the Product in their stores and giving the Product  
24 *legitimacy* The Retail Defendants furthered the means for BHP and Haskell to sell the mislabeled  
25 and dangerous product and commit UCL violations making The Retail Defendants liable for UCL  
26 Violations.

27 42. The members of the public Plaintiffs represent herein have no adequate remedy at  
28 law and will suffer irreparable injury in that Defendants, and each of them, continue to refuse to

1 give adequate warnings, notice, disclaimers or issue a recall of StarCaps in violation of the UCL  
 2 as alleged herein, thus posing a continuing threat to the members of the public Plaintiffs represent  
 3 herein.

4 43. This action seeks to enforce important rights affecting the public interest by  
 5 insuring that The Product is removed from the marketplace which makes The Product available to  
 6 the general public and giving notice and warnings to the general public of the presence of  
 7 Bumetanide in the Product as well as seeks restitution and a disgorgement of revenues for the  
 8 violation of the UCL. Consequently, Plaintiffs should be awarded attorneys' fees and costs for  
 9 pursuit of this public interest, pursuant to California Code of Civil Procedure §1021.5.

10 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

## 11 **SECOND CAUSE OF ACTION**

### 12 **Violation Of Business And Professions Code Section 17500, *et seq.*** 13 **(By Plaintiffs Against All Defendants)**

14 44. Plaintiffs reallege and incorporate by reference each and every allegation set forth  
 15 in paragraphs 1- 43 above, as though they are set forth in full.

16 45. The Defendants, through their mislabeling and advertisement of StarCaps as stated  
 17 above, engaged in advertising StarCaps with the intent to directly or indirectly induce members of  
 18 the public to purchase the Product and placing the general public in potential harm. Defendants'  
 19 concealment of the Bumetanide in StarCaps as alleged herein was carried with the intent to  
 20 directly or indirectly induce members of the public to purchase StarCaps.

21 46. Defendants' knew, or by the exercise of reasonable care should have known, that  
 22 their activities and concealments alleged herein were misleading and likely to deceive the public.

23 47. Plaintiffs are informed and believe and thereon allege that Defendants GNC1,  
 24 GNC2 and Vitamin Shoppe, directly and indirectly participated in, aided and abetted, conspired  
 25 with and furthered the means for Defendant BHP and Haskell to violate the UCL as alleged both  
 26 herein by concealing from the general public the presence of Bumetanide in StarCaps, as well as  
 27 the potential side effects of the Bumetanide in persons when digested without medical  
 28 supervision.

48. The members of the public Plaintiffs represent herein have no adequate remedy at law and will suffer irreparable injury in that Defendants, and each of them, continue to refuse to give adequate warnings, notice of the presence of Bumenatide in StarCaps, stop the sale of StarCaps or issue a recall of StarCaps.

49. This action seeks to enforce important rights affecting the public interest by insuring that advertisements and marketing of StarCaps accurately reflects the ingredients in StarCaps and not deceive the consuming public. Consequently, Plaintiff should be awarded attorneys' fees and costs for pursuit of this public interest, pursuant to California Code of Civil Procedure §1021.5.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth below:

### THIRD CAUSE OF ACTION

## Unjust Enrichment (Against All Defendants)

50. Plaintiffs re-allege and incorporate by reference, each and every allegation set forth in paragraphs 1 through 49 above, as though they are set forth in full.

51. By engaging in the conduct described in this Complaint, Defendants have been unjustly enriched by the sale of StarCaps by their violation of the California Sherman Act, the use of false advertising, their negligence and by engaging in fraudulent and deceptive conduct to persuade customers that StarCaps is “an all natural product” when it is in fact not.

52. As a proximate result of Defendants' unlawful, fraudulent, and unfair conduct, Defendants have obtained revenues by which they became unjustly enriched at Plaintiff and members of the proposed class's expense. Under the circumstances alleged herein, it would be unfair and inequitable for Defendants to retain the revenues and profits it has unjustly obtained at the expense of the Plaintiffs and the Class.

53. Accordingly, Plaintiffs seek an order establishing Defendants as constructive trustees of the profits that served to unjustly enrich them, together with interest during the period in which Defendants have retained such funds, requiring Defendants to disgorge those funds to Plaintiffs and members of the proposed Class in a manner to be determined by the Court.

1 WHEREFORE, Plaintiff pray for relief as hereinafter set forth below.

2  
3 **FOURTH CAUSE OF ACTION**

4 **BREACH OF EXPRESS AND IMPLIED WARRANTY**  
5 **(Against All Defendants)**

6 54. Plaintiffs re-allege and incorporate by reference, each and every allegation set  
7 forth in paragraphs 1 through 53 above, as though they are set forth in full.

8 55. Defendants at all times warranted to its customers by label and otherwise that  
9 StarCaps were merchantable as “an all natural dietary supplement”.

10 56. By the actions of Defendants as described above, Defendants breached the express  
11 and implied warranty of merchantability and the express warranty of fitness for a particular  
12 purpose.

13 WHEREFORE, Plaintiff pray for relief as hereinafter set forth below.

14  
15 **FIFTH CAUSE OF ACTION**

16 **STRICT PRODUCT LIABILITY**  
17 **(Against All Defendants)**

18 57. Plaintiffs re-allege and incorporate by reference, each and every allegation set  
19 forth in paragraphs 1 through 56 above, as though they are set forth in full.

20 58. Defendants, and each of them, by their actions as described above, and most  
21 particularly, by failing to warn consumers, in view of their professed expertise and superior  
22 knowledge and selling an inherently dangerous product should be held strictly liable for their  
23 actions. Defendants, and each of them, were in the chain of distribution of the Product, which,  
24 because of the containment of Bumetanide, in an inherently dangerous product that should have  
25 never been placed in the stream of commerce in a dietary supplement. Defendants and each of  
26 them participated in bringing the Product to market and in fact sold thousands of bottles of the  
27 Product putting Plaintiffs and the Class at risk.  
28



1 WHEREFORE, Plaintiff pray for relief as hereinafter set forth below.

2  
3 **SIXTH CAUSE OF ACTION**

4 **VIOLATION OF THE CALIFORNIA SHERMAN ACT**  
5 **(Against All Defendants)**

6 59. Plaintiffs re-allege and incorporate by reference, each and every allegation set  
7 forth in paragraphs 1 through 58 above, as though they are set forth in full.

8 60. California's Sherman, Food, Drug and Cosmetic Act (The Sherman Act),  
9 California Health & Safety Code §§ 108975-111915 protects consumers against mislabeling of  
10 products including dietary supplements. By Defendants actions as described above they have  
11 violated the Sherman Act.

12  
13 WHEREFORE, Plaintiff prays for relief as hereinafter set forth below.

14  
15 **SEVENTH CAUSE OF ACTION**

16 **NEGLIGENCE**  
17 **(Against All Defendants)**

18 61. Plaintiffs re-allege and incorporate by reference, each and every allegation set  
19 forth in paragraphs 1 through 60 above, as though they are set forth in full.

20 62. Defendants had a duty to the Plaintiffs and the proposed Class to make certain that  
21 the Product that they placed in the stream of commerce is properly labeled and safe for  
22 consumption. Defendants should have known that the Product was mislabeled and contained a  
23 dangerous prescription drug. The Defendants have superior knowledge to the average consumer  
24 to be able to determine the safety of the products they offer the unwitting consumer.

25 63. Defendants, and each of them, despite their superior knowledge, failed to detect  
26 the presence of Bumetanide in the Product inducing Plaintiffs and the Class to purchase the  
27 Product.

28 64. It was foreseeable that Plaintiffs and the proposed Class would rely on Defendants

1 to provide a product that was “all natural” and safe from dangerous ingredients, especially when  
2 the retail outlets were of the reputation, substance and size of GNC and Vitamin Shoppe. GNC  
3 and Vitamin Shoppe provided the means to bring the Product to a huge market of consumers who  
4 suffered injury because they relied on the reputation of Defendants, particularly GNC and the  
5 Vitamin Shoppe. There is little burden on Defendants, great need and very serious consequences  
6 to consumers to make certain that the products Defendants offer are free from additional  
7 ingredients, safe for consumption and are properly advertised and labeled.

8 65. Due to Defendants negligence Plaintiffs and the proposed Class have been harmed  
9 by purchasing the Product and are entitled to damages as more fully set forth below.

10  
11 WHEREFORE, Plaintiff prays for relief as hereinafter set forth below.

12  
13 **DEMAND FOR JURY TRIAL**

14 66. Plaintiffs demand a trial by jury on all claims so triable as a matter of right.  
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**PRAYER FOR RELIEF**

Wherefore, Plaintiffs, on behalf of themselves and as representatives of all other persons similarly situated, prays for judgment against Defendants, as follows:

1. For an order certifying the class to proceed as a class action and appointing Plaintiffs Grady Jackson and Kelley Alexander, and their counsel, to represent the class;
2. For restitution of all monetary amounts paid and obtained by the Defendants from those persons of the general public and members of the Class represented by Plaintiffs, directly or indirectly through all of Defendants' distribution channels, as a result of such persons' purchase of StarCaps contaminated with Bumetanide;
2. For disgorgement to each member of the general public and/or to all members of the Class of all revenues and profits made by Defendants from the sale of StarCaps with Bumetanide to such persons (i.e., not disgorgement to a fluid fund);
3. For rescission of all purchase/sale transactions with each member of the general public and the Class represented by Plaintiff;
4. For a mandatory injunction compelling Defendants to take all reasonable, necessary and appropriate actions to identify, locate and warn all purchasers of StarCaps with Bumetanide the measures one should take to mitigate digestion of the tainted StarCaps;
5. For a mandatory injunction compelling Defendants to notify all members of the general public and the Class of the inherent threat of Bumetanide;
6. For attorneys' fees and costs of suit pursuant to Code of Civil Procedure §1021.5 or from the amount recovered for the common benefit of the class;
7. For statutory costs of suit herein; and
8. For such other and further relief as the Court may deem proper.

DATED: March 2, 2008

PINNACLE LAW GROUP LLP

By: /s/ Eric J. Farber  
Eric J. Farber  
Attorneys for Plaintiffs

**PROOF OF SERVICE**

I am employed in the office of a member of the bar of this Court in the City and County of San Francisco, at whose direction this service was made. I am over the age of 18 and not a party to the within action. My business address is 425 California Street, Suite 1800, San Francisco, California 94104. On March 2, 2009, I served the document described as:

**STIPULATION OF PARTIES TO EXTEND TIME FOR DEFENDANTS TO RESPOND TO COMPLAINT.**

on the interested parties in this action by placing [ ] the original [X] true copies thereof enclosed in sealed envelopes addressed as follows:

David Gernsbacher  
9107 Wilshire Blvd., Suite 450  
Beverly Hills, CA 90210

Roger Myers, Esq.  
HOLME, ROBERTS & OWEN LLP  
560 Mission Street, 25<sup>th</sup> Floor  
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Attorneys for Balance Health Products, Inc and  
Nikki Haskell

Attorneys for The Vitamin Shoppe Industries

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Sidney K. Kanazawa  
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1800 Century Park East, 8<sup>th</sup> Floor  
Los Angeles, CA 90067

Attorneys for Great Earth Companies, Inc.

Attorneys for General Nutrition Corporation,  
and General Nutrition Centers, Inc.

[X] U.S. MAIL: Service was accomplished by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid in the United States mail at San Francisco, California, addressed as set forth above.

[X] and through the Notice of Electronic Filing for parties and counsel who are registered ECF Users.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Executed on March 2, 2009, at San Francisco, California.

/s/ Shauna Hardeman  
Shauna Hardeman